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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
-----X  
HUGH O'KANE ELECTRIC CO., INC.,  
Plaintiff,  
  
-against-  
  
GJF CONSTRUCTION CORP., d/b/a  
BUILDERS GROUP, LLC, d/b/a BUILDERS  
GROUP TECHNOLOGIES and WESTSIDE  
OF NY LIFE,  
  
Defendants.  
-----X

405 Lexington Avenue  
New York, New York  
  
February 1, 2006  
4:05 p.m.

TELEPHONIC DEPOSITION of  
ROBERT BACHMEIER, a Non-party witness herein,  
taken by the Plaintiff, pursuant to Agreement,  
held at the above-mentioned time and place,  
before Peter Boccard, a Notary Public of the  
State of New York.

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A P P E A R A N C E S:

DANIEL GAMMERMAN, ESQ.  
Attorneys for Plaintiff  
6800 Jericho Turnpike, Suite 110W  
Syosset, New York 11791

MOSES & SINGER, L.L.P.  
Attorneys for Defendants  
405 Lexington Avenue  
New York, New York 10174  
BY: SCOTT E. SILBERFEIN, ESQ.

ALSO PRESENT:

Martin Steinberg, Esq. (Via Telephone)  
Isaac Starshefsky

-oOo-

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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND

7

AGREED by and among the attorneys for the

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respective parties hereto as follows:

9

THAT certification and filing be

10

and the same hereby are waived;

11

THAT all objections except as to

12

the form of the question are reserved to the

13

time of trial;

14

THAT the witness may subscribe

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and swear to their testimony before any

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Notary Public with the same force and effect

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as though sworn to before a Justice of this

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Court.

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MR. GAMMERMAN: Would you please premark this group of documents as Qwest Exhibit 1.

(The above-mentioned record was marked as Qwest Exhibit 1 for identification.)

MR. GAMMERMAN: And would you please mark this as Qwest Exhibit 2.

(The above-mentioned record was marked as Qwest Exhibit 2 for identification.)

-oOo-

R O B E R T        B A C H M E I E R,  
having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MR. GAMMERMAN:

Q        State your name and address for the record, please.

A        Robert Bachmeier, 4650 Lake Hurst Court, Dublin, Ohio 43016.

Q        Good afternoon, Mr. Bachmeier. My name is Daniel Gammerman. I represent the

1                                   Bachmeier  
2       plaintiff, Hugh O'Kane, L.L.C., in an action  
3       it brought against, and I will call all the  
4       defendants by the name Builders Group.

5                           Just so you and your counsel  
6       know, we have marked as Qwest Exhibit 1 all  
7       of the documents which were produced in  
8       response to the subpoena and there are 74 in  
9       all.

10                           Also, we have marked as Qwest  
11       Exhibit 2 a copy of the subpoena which was  
12       addressed to Qwest Communications.

13                           I don't think I am going to  
14       have any other documents to mark and I will  
15       proceed to ask you questions now.

16                   A           Okay.

17                   Q           If at any time your attorney  
18       interposes an objection, please do not answer  
19       until we clear up his objection. And if  
20       there's any question I ask you that you don't  
21       understand, please let me know so that I can  
22       rephrase it and so that we all understand the  
23       question.

24                           Is that okay?

25                   A           Okay.

1 Bachmeier

2 Q Very briefly, can you tell me  
3 what your position is today with Qwest?

4 A I am a project manager.

5 Q How long have you been a project  
6 manager?

7 A For approximately seven years.

8 Q What is your familiarity with  
9 the project at 60 Hudson Street?

10 Were you a project manager in  
11 connection with that job?

12 A No, I was not.

13 Q Are you the person at Qwest who  
14 has the most knowledge with respect to the 60  
15 Hudson Street job?

16 A I believe so. I would have to  
17 do more research. There may be others. I am  
18 not sure.

19 Q When you say more research, are  
20 you referring to the documents forwarded by  
21 the subpoena?

22 A The subpoena that was issued.

23 Q And the result of which is the  
24 documents that were sent, the 74 pages?

25 A Yes.

1 Bachmeier

2 Q I would like to direct your  
3 attention to pages 17 through 28.

4 A Okay.

5 Q I would ask you if those pages  
6 go together as one document or if those pages  
7 are separate documents.

8 A I am sorry, 17 through what page?

9 Q Through 28.

10 A They do go together but I would  
11 say there's others, some of the attachments  
12 thereafter.

13 Q Would it be fair to say that 17  
14 through 28 constitutes perhaps the original  
15 job or the original scope of work?

16 MR. SILBERFEIN: Note my  
17 objection.

18 A They would constitute part of  
19 the original contract.

20 Q What other documents in this  
21 production would also constitute the original  
22 contract?

23 A There would be the master  
24 contract which is referenced on the first  
25 page.

1 Bachmeier

2 Q Anything else?

3 A Attachment number five, page 29  
4 would be part of it. Attachment number six,  
5 page 30 would be part of it, as well as  
6 appendix A, Qwest page 31, Qwest page 32,  
7 Qwest page 33, 34, Qwest page 35, Qwest page  
8 36, 37, Qwest page 38, 39, page 40.

9 Q Is that it or are you looking at  
10 the other pages?

11 A I am looking at the other ones.

12 It appears Qwest page 41 through  
13 Qwest page 61 would also be a part of it, but  
14 without having the original in my hand I  
15 wouldn't be able to confirm that.

16 Q Would you please look at pages  
17 14 through 16.

18 A Okay.

19 Q Was that the first change order  
20 in connection with this job?

21 A It appears as per the records it  
22 is.

23 Q Looking at page 14, contract  
24 number 008349, is that a Qwest contract  
25 number?



1 Bachmeier

2 A It is.

3 Q And looking at document 13, is  
4 that the second change order?

5 A It is. I don't have the  
6 originals in front of me. I have copies, so  
7 I don't know if there are attachments to this  
8 or not, the first page of the second change  
9 orders.

10 Q What we have is page one of one  
11 at the bottom and it is dated January 18th,  
12 2001.

13 A Yes.

14 Q Is the next change order shown  
15 by documents eight through 12?

16 A Yes, it is.

17 Q Is the next change order shown  
18 by documents five through seven?

19 A Yes, it is.

20 Q And is the next change order  
21 shown by documents one through four?

22 A Yes, it is.

23 Q As far as you know, are there  
24 any other change orders in connection with  
25 this 60 Hudson Street project?

1 Bachmeier

2 A Based on my review of the file I  
3 haven't found any.

4 Q Would you please look at  
5 documents 65 through 67.

6 A Okay.

7 Q Document 65 is a letter dated  
8 December 11th, 2002 from Robert Townsley.

9 Was he the project manager at  
10 the time he signed this letter?

11 A He was the project manager at  
12 the time this letter was signed. He wasn't  
13 the original project manager, though.

14 Q But he was the project manager  
15 in December of '02?

16 A Yes.

17 Q There are two fax cover sheets;  
18 document 66 is dated December 11th of '02,  
19 and when you were reviewing the file, this  
20 fax cover sheet, was it attached to or  
21 annexed to document 65?

22 A It was attached to.

23 Q What about document 67? Was  
24 that also attached to it?

25 A That was also attached to it,

1 Bachmeier

2 yes.

3 Q By looking at the top of  
4 document 67, is that a reference as to the  
5 date this document was faxed?

6 A Without knowing how this fax  
7 machine works, I couldn't say for sure.

8 Q Let us look at documents 68  
9 through 70.

10 A Okay.

11 Q It is a fax cover sheet with  
12 copies of two checks. Do you see that?

13 A Correct. Yes.

14 Q Do you know what these payments  
15 represent?

16 A Based on the research I did  
17 these payments represent the final retention  
18 payment.

19 Q Do you know if that was the  
20 \$162,827.09?

21 A If that is what it adds up to  
22 be, yes.

23 Q Going back to document 65, did  
24 your review of the files indicate whether  
25 Qwest received any written response to this

1 Bachmeier

2 letter from Builders Group?

3 A Based on my research I didn't  
4 find any.

5 Q And the number that is showing  
6 in the second paragraph of this letter is  
7 \$62,169.19, and what does that represent?

8 A Give me a second here.

9 Q Sure.

10 A I don't have that information in  
11 front of me right now. I don't know if I can  
12 accurately answer that question.

13 Q The fax cover sheet, which is  
14 document number 70 --

15 A Actually, you know what, can I  
16 go back to that question?

17 Q Okay.

18 A That appears, based on the  
19 research I have done, that is the difference,  
20 that is the deductive change order from the  
21 contracts which was included in the five  
22 change orders minus the full value paid after  
23 retention.

24 Q The fax cover sheet which is  
25 document 70, that is dated 8/21 and there's

1 Bachmeier

2 no year on it.

3 Do you know when that fax was  
4 sent by Mr. Guerrero to Mr. Townsley?

5 A It was actually sent to Guerrero  
6 from Steve. I don't know when that was,  
7 though, the year.

8 Q Would you please take a look at  
9 document 71 and tell me what this is.

10 First, 71, 72 and 73 may go  
11 together, but you can answer separately if  
12 you like.

13 A They do go together as I found  
14 them in the file, and it appears this is the  
15 transmittal associated with the final lien  
16 waiver that was sent to Qwest.

17 Q When this lien waiver was sent  
18 to Qwest, was this before or after the two  
19 checks which are shown on Qwest document 68  
20 and 69 were paid?

21 A I wasn't the one in receipt of  
22 it. I don't know when it was actually  
23 received.

24 Q The lien waiver, is that  
25 document 72 and 73?

1 Bachmeier

2 A Correct.

3 Q In the top fourth of the lien  
4 waiver it says project 00-322, electrical  
5 work. What does that mean?

6 A I wasn't the one that filled it  
7 out. I don't know what the intent of that  
8 was.

9 Q If you will look at page 17, we  
10 have project number, and it ends in 33019.  
11 Do you see that?

12 A Yes.

13 Q And above that it says contract  
14 order number 8349?

15 A Yes.

16 Q On document 72, it has, after  
17 the words construction contract, 8349.

18 Do you see that?

19 A Correct.

20 Q Does this lien waiver apply to  
21 what is shown by document number 17?

22 A Yes.

23 Q Now, the last document, which is  
24 document 74, is a letter to you from Builders  
25 Group?

1 Bachmeier

2 A Correct.

3 Q Dated July 23rd, 2004.

4 Did you receive that letter on  
5 or about that time?

6 A On or about that time, yes.

7 Q After you received this letter,  
8 what, if anything, did you do?

9 A I would have forwarded this  
10 to our accounts payable group to do some  
11 research.

12 Q And did you do that?

13 A I did.

14 Q And did you ever hear from the  
15 accounts payable group?

16 A I did.

17 Q And what did they tell you?

18 A They told me that the contract  
19 was paid in full, the final lien release was  
20 received and the contract was closed.

21 Q Did they tell you that Qwest did  
22 not owe any money to Builders Group?

23 A For this contract, yes.

24 Q And the letter which is document  
25 74 appears to represent four contracts in

1 Bachmeier

2 four contract amounts.

3 Do you see that?

4 A Correct.

5 Q Were there four separate  
6 contracts or was there one contract with four  
7 sub-parts? What is your understanding of it?

8 A Without knowing what contract  
9 number each one of these references, I  
10 wouldn't be able to answer that.

11 I could make assumptions, but  
12 that is not fair unless I have the real  
13 numbers in front of me.

14 Q But when you spoke to accounts  
15 receivable, what did you ask them to  
16 determine?

17 MR. SILBERFEIN: Note my  
18 objection.

19 A Was that an objection up there?

20 Q That wasn't Mr. Steinberg. You  
21 can answer the question.

22 A Okay. I asked them to review  
23 our contract with Builders Group based on  
24 this letter.

25 Q And they came back and told you



1 Bachmeier

2 it was paid in full?

3 A Our contract was paid in full,  
4 yes.

5 MR. GAMMERMAN: I have nothing  
6 further.

7 MR. SILBERFEIN: I am going to  
8 take two minutes, and then I will ask  
9 some questions of you on behalf of  
10 Builders Group.

11 (Short recess taken.)

12 MR. GAMMERMAN: Just for the  
13 record, also in attendance is Scott  
14 Silberfein from Moses and Singer, who  
15 represents the defendants in this  
16 action, as well as a representative from  
17 Builders Group, Isaac Stareshefsky.

18 EXAMINATION BY MR. SILBERFEIN:

19 Q Mr. Bachmeier, my name is Scott  
20 Silberfein and I am from the law firm of Moses  
21 and Singer and we represent the defendants in  
22 this lawsuit.

23 I am also going to ask you  
24 several questions today. If you don't  
25 understand any of my questions, please let me

1 Bachmeier

2 know and I will try to rephrase them for you.

3 A Okay.

4 Q You previously testified that you  
5 have been a project manager for approximately  
6 seven years; is that correct?

7 A Correct.

8 Q How long have you been with  
9 Qwest Communications?

10 A About the same time, since June  
11 of '98.

12 Q In June of '98, in what locale  
13 were you stationed?

14 A My office was in Denver,  
15 Colorado.

16 Q When was the first time that you  
17 learned of a project at 60 Hudson Street in  
18 New York City?

19 A In general terms of the project?

20 Q Sure.

21 A Probably in 1999, 2000.

22 Q And at that time, what did you  
23 learn about the project?

24 A Just that it was a project.

25 Q Were you involved in the

1 Bachmeier

2 negotiation of the contract or contracts for  
3 that project?

4 A No.

5 Q Were you familiar with, on a  
6 day-to-day or weekly basis, with regard to  
7 the work to be performed at that location?

8 A No.

9 Q Did you at that time review any  
10 documents regarding the scope of work or the  
11 work to be performed at that location?

12 A No.

13 Q Did you only learn that  
14 information or review that documentation in  
15 response to the subpoena served upon Qwest  
16 Communications?

17 A Yes.

18 Q Do you remember the first time  
19 that you saw any documentation with regard to  
20 this contract and/or project?

21 A I don't recall the exact time.

22 Q Was it within the last 60 days?

23 A Yes, at least.

24 Q Did you speak to anyone at Qwest  
25 Communications with regard to the production

1 Bachmeier

2 of documents in response to the subpoena?

3 MR. STEINBERG: I want to  
4 caution the witness that he can identify  
5 he spoke to lawyers at Qwest but not  
6 what was discussed in any way.

7 MR. GAMMERMAN: Just so it is  
8 clear, I am not asking the witness to  
9 disclose any of the substance of those  
10 communications.

11 A Can you repeat question?

12 MR. SILBERFEIN: Would you  
13 please read it back.

14 (Record read.)

15 A Yes.

16 Q By name, can you identify those  
17 individuals without revealing the sum or  
18 substance of any of your discussions?

19 A Yes.

20 Q Please list those individuals.

21 A Well, Martin Steinberg.

22 Q Was there anyone else?

23 A Are we talking in writing or  
24 phone conversations or just any type of  
25 correspondence?

1 Bachmeier

2 Q Why don't we take in writing  
3 first.

4 Did you discuss the subpoena  
5 with anyone at Qwest in writing other than  
6 Martin Steinberg?

7 A Yes. Scott Updegraff.

8 Q Could you spell that for us?

9 A Let me pull it up here. Hold on  
10 a second. U-P-D-E-G-R-A-F-F. That is his  
11 last name, Scott the first name.

12 Q Anyone else other than Scott  
13 Updegraff in writing?

14 A Sharlene Pluckeck.

15 Q Anyone else?

16 A Joanne Timmerman.

17 Q Anyone else?

18 A Roy Haverkamp.

19 Q Anyone else?

20 A Leslie Bayliff, B-A-Y-L-I-F-F.

21 Q Anyone else?

22 A That is all I can recall at this  
23 time.

24 Q Are any of these individuals, in  
25 addition to Mr. Steinberg, counsel to Qwest

1 Bachmeier

2 or in the position of lawyer?

3 A I believe Roy Haverkamp, Leslie  
4 Bayliff are counsel or lawyers. I don't know  
5 their exact title.

6 Q What is Mr. Updegraff's title?

7 A I can pull that up for you.

8 Hold on.

9 He is a director of procurement.

10 Q Do you know generally what his  
11 job responsibilities are?

12 A No.

13 Q And what is Miss Pluckeck's  
14 title?

15 A She is a lead buyer.

16 Q Do you know what her general job  
17 responsibilities are as a lead buyer?

18 A No.

19 Q How about Miss Timmerman's  
20 position?

21 A She is also counsel, I believe.

22 Yes. She is a paralegal, I

23 think.

24 Q Are these individuals located in  
25 Colorado?

1 Bachmeier

2 A I am not sure where they are all  
3 located.

4 Q Where are you located?

5 A Dublin, Ohio.

6 Q Did you speak or correspond with  
7 anyone no longer employed by Qwest with regard  
8 to this subpoena?

9 A Yes.

10 Q Who were those individuals or  
11 individual?

12 A Sandy Kehoe.

13 Q Anyone else?

14 A No.

15 Q What was Sandy Kehoe's position  
16 with Qwest Communications?

17 A Accounts payable.

18 Q When did she leave Qwest's  
19 employ?

20 A I don't know.

21 Q Do you know if it was within the  
22 last year?

23 A No, I don't.

24 Q Why did you reach out to Miss  
25 Kehoe?

1 Bachmeier

2 A To help me locate the records  
3 that were required for the subpoena.

4 Q Did she help you locate them?

5 A She did, yes.

6 Q Did you have any discussions  
7 with Miss Kehoe regarding the documents that  
8 you were searching for?

9 A Other than the location?

10 Q Yes, other than the location.

11 A Oh. Not that I recall.

12 Q Where did she tell you they were  
13 located?

14 A In our archives.

15 Q And you knew how to access them  
16 from the archives?

17 A After speaking with her, yes.

18 Q When you reviewed the documents  
19 from the archives, did it contain more than  
20 the 74 pages of documents that Qwest  
21 Communications produced?

22 A Yes.

23 Q When you undertook your search  
24 or review of these documents, did you review  
25 documents relating to 60 Hudson Street, the



1 Bachmeier

2 work to be performed at 60 Hudson Street?

3 Was there more than one contract  
4 involved?

5 A Based on my research it appears  
6 that there's more than one contract.

7 Q Did you provide documents in  
8 response to the subpoena on more than the one  
9 contract?

10 A No. Not to my knowledge, no.

11 Q How many other contracts  
12 documents exist with regard to 60 Hudson  
13 Street?

14 A Without doing further research,  
15 I don't know.

16 Q Was it one other contract?

17 A There was at least one other,  
18 yes.

19 Q Do you know if there were five  
20 other contracts?

21 A No, I don't.

22 Q Did you at some point determine  
23 that the other contracts were not responsive  
24 to the subpoena served upon Qwest  
25 Communications?

1 Bachmeier

2 A I don't understand that  
3 question. Can you repeat that, I guess.

4 Q Sure. I will rephrase it.

5 Earlier you testified that you  
6 only produced documents relative to one  
7 contract at 60 Hudson Street; is that correct?

8 A Correct.

9 Q Why were documents not produced  
10 with regard to the other contract or  
11 contracts for 60 Hudson Street?

12 A I don't have the subpoena in  
13 front of me, but I believe it was referencing  
14 just this contract and a specific project  
15 number that Builders Group had assigned on  
16 their side of the contract.

17 Q I refer you to what has been  
18 marked as exhibit Qwest number two, which is  
19 a subpoena duces tecum.

20 Do you have that document in  
21 front of you?

22 A I can get it in a second.

23 Q Please.

24 A Okay. I have it.

25 Q I believe in response to one of

1 Bachmeier

2 my questions you mentioned that you thought  
3 the subpoena might have had a project number  
4 on it.

5 Could you point me to where on  
6 the subpoena duces tecum you remember seeing  
7 such a project number?

8 A Item A, item B, item C, all  
9 list a number 00-322 as a start of an overall  
10 invoice number, and that is typical of how it  
11 appears Builders Group started their invoices,  
12 with a project number on it.

13 Q So, based upon your review of  
14 the subpoena, the first five digits indicated  
15 to you a project number designated by  
16 Builders Group; is that correct?

17 A Correct.

18 Q If I was to tell you that the  
19 sixth digit represented separate contracts  
20 between Qwest and Builders Group, would you  
21 be able to undertake an additional search for  
22 documents relative to those contract numbers?

23 A I think I would only be able to  
24 do a search if you had a specific contract  
25 number issued by Qwest.

1 Bachmeier

2 Q When you undertook your search  
3 of the documents, how many numbers of the  
4 project number did you search for? And if  
5 you don't understand my question, you had  
6 indicated earlier that the job number had  
7 five digits.

8 Did you ever undertake or see  
9 any documents that would have had six digits  
10 to identify the different contract numbers?

11 A Not that I recall, but I am not  
12 saying I didn't see it.

13 Q At this time in this dispute  
14 there are at issue four different contracts  
15 at least that appear to be at issue between  
16 Builders Group and Qwest, all starting with  
17 the first five numbers of 00-322.

18 A Okay.

19 Q Then, the sixth digit would be a  
20 one, a two, a three or a four, indicating the  
21 four separate contracts.

22 A Okay.

23 Q It is our understanding that the  
24 first contract would be for general design  
25 work at 60 Hudson Street.

1 Bachmeier

2 Contract number two would be for  
3 electrical work at 60 Hudson Street, which is  
4 what I believe your documents are responsive  
5 to.

6 A Okay.

7 Q Then there would be a contract  
8 number three, which would be for enclosure  
9 work at 60 Hudson Street, and contract number  
10 four, for what was termed as miscellaneous  
11 work at 60 Hudson Street.

12 What I would like to do at this  
13 time is to call for the production of the  
14 relevant documents for projects numbered  
15 00-322, number one, 00-322, number three and  
16 00-322, number four. In case it was not  
17 clear in the subpoena, those documents would  
18 also be asked of Qwest to be produced with  
19 regard to the subpoena.

20 A Okay.

21 MR. STEINBERG: First of all,  
22 we will take that under consideration,  
23 but the discovery cut-off has passed.

24 MR. SILBERFEIN: But the  
25 attorneys have agreed obviously today

1 Bachmeier

2 because we are taking a deposition of  
3 the defendant.

4 MR. STEINBERG: We didn't agree  
5 to ongoing production. We agreed to the  
6 deposition.

7 You could have issued your own  
8 subpoena if you felt that in any way  
9 Mr. Gammerman's subpoena was deficient.

10 We came to an agreement as to  
11 narrowing the scope of the subpoena.

12 You could have issued your own  
13 subpoena if you felt that didn't meet  
14 your needs.

15 MR. SILBERFEIN: The subpoena  
16 that was ultimately agreed upon between  
17 you and Mr. Gammerman, which I was not  
18 involved in, doesn't adequately request  
19 documents relating to these additional  
20 contracts.

21 Specifically, for example,  
22 letter A, which Mr. Bachmeier referenced  
23 before, has the digits of 00-322, number  
24 three, and then letter B has 00-322,  
25 number four.

1 Bachmeier

2 So, I do believe that the  
3 subpoena adequately and specifically  
4 requested documents relative to these  
5 additional contracts.

6 MR. STEINBERG: Right. And you  
7 received these documents, I assume,  
8 because Mr. Gammernan did before the  
9 discovery cut-off.

10 You could have come back to us  
11 within that time saying that our  
12 response in some way did not meet what  
13 you felt was adequate instead of waiting  
14 until the deposition, after the  
15 discovery cut-off, to raise that issue.

16 MR. SILBERFEIN: Respectfully,  
17 again, sir, just because I may have  
18 reviewed these documents before -- first  
19 of all, I am not sure of the discovery  
20 cut-off you are talking about as you are  
21 not a party to this litigation.

22 But, be that as it may, I am  
23 still entitled to inquire as to why you  
24 didn't produce certain documents.

25 MR. STEINBERG: I am not

1 Bachmeier  
2 stopping you from asking that, but you  
3 cannot impose on this witness an  
4 obligation to produce further documents.

5 You can make that request, but  
6 that does not mean we are going to honor  
7 it if we feel it is for any reason not  
8 appropriate.

9 MR. SILBERFEIN: You are  
10 entitled to your opinion, but the  
11 subpoena requested you to produce these  
12 documents already in which the witness  
13 has just confirmed by his testimony.

14 MR. STEINBERG: Right. And he  
15 said, his evaluation of the documents,  
16 he determined in his mind that those  
17 other documents were not necessarily  
18 relevant to what was being sought.

19 It is possible it is a mistake  
20 or whatever, but he was not the project  
21 manager at the time.

22 You could have come back to  
23 him and said, these documents are not  
24 complete and we need these additional  
25 documents.



1 Bachmeier

2 You sat on them and didn't. I  
3 mean, that is not our responsibility.  
4 We are a third party.

5 MR. SILBERFEIN: I understand  
6 that, but I was not the one that was in  
7 contact with you.

8 I did not issue the original  
9 subpoena and I felt that the subpoena  
10 did adequately request these documents.

11 I thought they may not exist  
12 because you did not produce them, and  
13 now, however, the witness has testified  
14 that they may, in fact, exist.

15 He is not sure, so I have asked  
16 for a search to be undertaken and for  
17 them to be produced.

18 MR. STEINBERG: You can ask.

19 Does your client or do you have  
20 copy of these contracts? I would assume  
21 your client would have copies of these  
22 contracts.

23 MR. SILBERFEIN: That may be the  
24 case, but even if I have copies of the  
25 contracts, I am certainly entitled to

1 Bachmeier

2 get copies from you.

3 MR. STEINBERG: That is not  
4 necessarily true since we are a third  
5 party.

6 The courts have held that if you  
7 can obtain those documents from a party,  
8 then you should not put the burden on a  
9 third party to produce them and just  
10 getting duplicate production is putting  
11 a burden upon a third party that is not  
12 necessary.

13 MR. SILBERFEIN: That may be  
14 for the contracts, and I understand your  
15 point, but certainly not as to invoices  
16 as listed in subsections A, B, C and D.  
17 I am sorry, C, and then number two of  
18 the subpoena.

19 MR. STEINBERG: Right. And do  
20 you have those invoices?

21 MR. SILBERFEIN: No. They have  
22 not all been produced during the  
23 litigation, hence is why I subpoenaed.

24 MR. STEINBERG: But the point is  
25 you sat on the ability to enforce what

1 Bachmeier

2 you needed to obtain instead of relying  
3 on Mr. Gammerman to do the job for you.

4 MR. SILBERFEIN: They were  
5 specifically requested in the subpoena,  
6 sir. They were not produced, and now I  
7 have learned during the deposition that  
8 they may actually exist.

9 MR. GAMMERMAN: Let me just add,  
10 we know the witness is on a tight  
11 schedule. I have a few follow-ups and I  
12 don't know if Mr. Silberfein is done, so  
13 why don't we agree that we have an open  
14 issue and we discuss it tomorrow among  
15 counsel to see if there's a way to  
16 resolve it and produced with  
17 Mr. Bachmeier's deposition.

18 MR. STEINBERG: That's fine  
19 with us.

20 MR. GAMMERMAN: I mean,  
21 Mr. Silberfein's request is on the  
22 record, your response is on the record.

23 I would just suggest that we  
24 proceed if he has any further questions.

25 I have a few follow-up, but I

1 Bachmeier

2 want to wait until he is finished, and  
3 then hopefully we will be done.

4 EXAMINATION CONTINUED BY MR. SILBERFEIN:

5 Q Mr. Bachmeier, when you inquired  
6 of accounts payable upon receiving the  
7 July 23rd, 2004 letter from George Figliolia  
8 which is marked as Qwest 74, did you inquire  
9 of accounts payable if there were other  
10 contracts between Qwest and Builders Group?

11 A I don't recall.

12 Q Do you remember if accounts  
13 payable, in response to you, indicated that  
14 there were other contracts between Qwest and  
15 Builders Group?

16 A I don't recall.

17 Q Before today, were you aware  
18 that there were four separate contract  
19 numbers between Qwest and Builders Group?

20 A I was aware there was more than  
21 one. I wasn't aware of a certain number.

22 Q Did you believe that the  
23 documents that you produced to us or in  
24 response to the subpoena were relative to one  
25 contract or more than one contract?

1 Bachmeier

2 A Can you repeat that? I am  
3 sorry.

4 (Record read.)

5 A From my records, and just give  
6 me a second to review them, with the  
7 exception of Qwest document 74, from my brief  
8 review here, it looks like they are all part  
9 of one Qwest contract.

10 I am not sure which contract, as  
11 I stated before, Qwest documents they refer  
12 to as they don't correspond to any of our  
13 numbers.

14 Q As project manager, are you  
15 aware of projects to be performed that Qwest  
16 is contracting for in other parts of the  
17 United States other than, for example, now in  
18 Dublin, Ohio?

19 A With who?

20 Q Any projects that Qwest  
21 Communications is undertaking in other parts  
22 of the United States.

23 A Am I aware of any?

24 Q Are you aware of any?

25 A Yes.

1 Bachmeier

2 Q Generally, how do you become  
3 aware of other projects that Qwest is  
4 performing?

5 A Through update meetings,  
6 conversations with other project managers.

7 Q Over the past three or so years,  
8 are you aware of other projects that Qwest  
9 has undertaken in and around the New York  
10 City area?

11 A In the last how many years?

12 Q Approximately three.

13 A Yes.

14 Q Approximately how many projects  
15 would you say that Qwest has undertaken in  
16 the New York City area in the last three  
17 years?

18 A Without going back and adding  
19 them up, I don't know.

20 Q As an estimation, would you say  
21 that there are more than 25 projects?

22 A As an estimation, I would say  
23 there's, depending how you define a project,  
24 between 15 and 25.

25 Q How do you define a project when

1 Bachmeier

2 you give that number, just so we have the  
3 same understanding of what you mean?

4 A A project is a project number  
5 that would be generated in our system for a  
6 specific set of work at a specific site and  
7 may contain more than one contract.

8 Q Could a certain premises or  
9 location have more than one project number?

10 A It may.

11 MR. SILBERFEIN: Subject to our  
12 resolution of the outstanding document  
13 request, I have no further questions  
14 based upon the documents Qwest has  
15 already produced.

16 MR. STEINBERG: Thank you.

17 MR. GAMMERMAN: I have a couple  
18 of quick follow-ups.

19 MR. STEINBERG: Sure.

20 EXAMINATION BY MR. GAMMERMAN:

21 Q Has anybody contacted you,  
22 Mr. Bachmeier, from Builders Group in the  
23 last six months?

24 A Not that I recall.

25 Q Have you received copies of

1 Bachmeier

2 e-mails from other Qwest employees, that  
3 those employees received from Builders Group?

4 A Yes. I don't know if those  
5 e-mails were within the last six months,  
6 though.

7 Q Do you know who those e-mails  
8 were from at Builders Group?

9 A Without going back and looking,  
10 I don't recall.

11 Q Other than document 74, you are  
12 not aware of any other written request for  
13 payment from Builders Group; is that correct?

14 A There was a subsequent letter  
15 with a larger balance that was from Builders  
16 Group. I don't know who it was to, without  
17 going and finding it. But this was the  
18 latest request.

19 Q The latest request being the  
20 July 23rd of '04 request?

21 A That is the latest I found in  
22 my records and based on the research I have  
23 done.

24 Q With respect to the electrical  
25 work at 60 Hudson Street, do you believe the



1 Bachmeier

2 documents that you sent were responsive to  
3 the subpoena?

4 A Based on my interpretation of  
5 the subpoena, yes.

6 Q And with respect to the project  
7 number 00-322, which is referenced in Qwest  
8 document 74, when you sent this to Qwest  
9 accounts receivable, is it your understanding  
10 that they would have reviewed any contract  
11 number, any balance allegedly due on any  
12 contract number beginning with those digits?

13 A I don't know what they use -- it  
14 discusses project 322.

15 Yes, I believe that is how they  
16 would have done it, but I can't say without  
17 personally asking them.

18 Q Did they ever call you with any  
19 questions about document 74?

20 A No, other than the original  
21 comment that I gave to you before, that they  
22 were paid in full and that these final lien  
23 waivers were issued.

24 Q When you say they were paid in  
25 full, what are you referring to?

1 Bachmeier

2 A That the contractor was paid in  
3 full.

4 Q And is it your belief that  
5 whoever looked at this in accounts receivable  
6 added up the payments, added up the invoices  
7 and made that determination?

8 MR. SILBERFEIN: Just note my  
9 objection.

10 How can the witness know what  
11 accounts payable was thinking?

12 MR. GAMMERMAN: He said he was  
13 advised.

14 MR. SILBERFEIN: He said he  
15 believes.

16 Q Mr. Bachmeier, in your  
17 conversation with accounts payable, were you  
18 given the understanding that they reviewed  
19 the contracts under the 00-322 project number  
20 and determined that no money was due?

21 MR. SILBERFEIN: Note my  
22 objection.

23 Q You can answer.

24 A Correct.

25 MR. GAMMERMAN: I have nothing

1 Bachmeier

2 further.

3 MR. SILBERFEIN: Thank you.

4 MR. STEINBERG: Thank you,  
5 gentlemen.

6 (Time noted: 5:00 p.m.)

7

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9

\_\_\_\_\_  
ROBERT BACHMEIER

10 Subscribed and sworn to before me  
11 this day of , .

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\_\_\_\_\_  
NOTARY PUBLIC

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1 Bachmeier

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Bachmeier

C E R T I F I C A T E

I, PETER BOCCARD, a Notary  
Public within and for the State of New York,  
do hereby certify that the foregoing  
examination of ROBERT BACHMEIER was taken  
before me the 1st day of February, 2006.

The said witness was by me duly  
sworn before the commencement of their  
testimony. The said testimony was taken  
stenographically by myself and then  
transcribed.

The within transcript is a true  
record of the said testimony.

I am not connected by blood or  
marriage with any of the said parties, nor  
interested directly or indirectly in the  
matter in controversy, nor am I in the employ  
of any of the counsel.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of February, 2006.

  
PETER BOCCARD

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